IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 53 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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C B I THROUGH THE SUPERINTENDENT OF POLICE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 53 of 2001

MR MUKESH R SHAH for Petitioner No. 1

MR HH PATEL, PUBLIC PROSECUTOR for Respondent No. 1

MR KISHOR M PAUL for Respondent No. 2

MR ASIT M MEHTA for Respondent No. 3,5

RULE SERVED for Respondent No. 4,6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /08/2001

C.A.V. JUDGEMENT

#. The Central Bureau of Investigation (for short,

the CBI) has filed this revision challenging the order of the Additional Sessions Judge, Morbi transferring the investigation from A.C.B. Rajkot to CBI Gandhinagar acting in exercise of powers under sec.156(3) of the Code of Criminal Procedure.

#. Shri MR Shah for the revisionist, Shri HH Patel, learned APP for the respondent no.1 and learned counsel representing the complainant, respondent no.2 were heard.

#. The brief facts giving rise to this revision are as under :

A complaint under secs.465, 467, 468, 471, 34, 114 and 120-B of the Indian Penal Code read with secs.7, 12, 13(2) of the Prevention of Corruption Act was filed by the respondent no.2 against four accused, respondent nos.3 to 6. The learned Assistant Sessions Judge, Morbi passed order dated 22-12-2000 directing that the complaint be sent to the Deputy Superintendent of Police, Anti Corruption Bureau, Rajkot for police investigation under sec.156(3) of the Code of Criminal Procedure and wanted report in the matter on or before 28-2-2001. However, under the impugned order the Additional Sessions Judge, Morbi was of the view that, "such type of inquiry is being done by the CBI, Gandhinagar and the A.C.B. Rajkot is directed to do needful in the matter, therefore, it is necessary to transfer and direct to do necessary inquiry under sec.156(3) of the Code of Criminal Procedure by the CBI Gandhinagar instead of Deputy Superintendent of Police, A.C.B., Rajkot. Therefore, the complaint be sent to the CBI Gandhinagar for police investigation under sec.156(3) of the Code of Criminal Procedure with the direction to report in this matter on or before 28-2-2001. Yadi accordingly."

#. The above order is not happily worded, but the order conveys an idea that he exercised power to transfer inquiry from Anti Corruption Bureau to the Central Bureau of Investigation and directed the CBI to investigate and report. This direction was clearly given under sec.156(3) of the Code of Criminal Procedure.

#. Shri MR Shah, learned counsel for the CBI contended that such direction could not be given by the Additional Sessions Judge, Morbi in the impugned order. In support of his contention, he has placed reliance upon the latest Apex Court's verdict in CENTRAL BUREAU OF INVESTIGATION, JAIPUR v. STATE OF RAJASTHAN AND ANOTHER 2001 AIR SCW 305. The verdict of the Apex Court, in this case, is clear that the magisterial power under sec.156(3) can not be stretched beyond directing the officer incharge of a

police station to conduct the investigation. A Magistrate, therefore, has no power to direct the Central Bureau of Investigation, CBI, to conduct investigation into any offence. This Court has also taken the same view in earlier case of INDUMATI M.SHAH AND OTHERS v. NARENDRA MULJIBHAI ASRA AND OTHERS 1995 CRI.L.J. 918.

#. The learned counsel for the complainant, respondent no.2 stated that he has no objection in case the impugned order is set aside, but he requested that the trial Court be directed to issue direction to the Deputy Superintendent of Police, A.C.B. Rajkot for police investigation under sec.156(3) of the Code as directed in its earlier order dated 22-12-2000.

#. Despite revision of list thrice, none appeared for the accused, respondent nos.3 to 6 to oppose this revision. For the reasons stated above, I find that the impugned order is patently illegal and without jurisdiction, hence, it requires to be quashed and set aside.

#. The revision, therefore, succeeds and is hereby allowed. The impugned order of the Additional Sessions Judge, Morbi is hereby set aside. He is directed to act in accordance with the earlier order dated 22-12-2000 and send the complaint to the Deputy Superintendent of Police, Anti Corruption Bureau, Rajkot for police investigation under sec.156(3) of the Code of Criminal Procedure with added direction that the investigation be conducted and concluded expeditiously.

Dated : __/08/2001. (D.C. Srivastava, J.)

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